

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DAVID H. MARION, Receiver for	:	CIVIL ACTION
Robert L. Bentley, Bentley	:	
Financial Services, Inc. and	:	
Entrust Group	:	
	:	
v.	:	
	:	
BENISTAR, LTD., BENISTAR 419	:	
PLAN SERVICES, INC., BENISTAR	:	
419 ADVANTAGE BENEFIT PLAN	:	
AND TRUST and BENISTAR	:	
ADMINISTRATIVE SERVICES, INC.	:	NO. 03-4700

MEMORANDUM AND ORDER

Fullam, Sr. J.

March 10, 2005

Plaintiff is the appointed Receiver for the Bentley entities, that were involved in an extensive Ponzi scheme. Plaintiff has been charged with the recovery of assets transferred by the Bentley entities to others prior to the Receivership order.

Defendants are a multi-employer welfare benefit plan and the entities that run it. The Second Amended Complaint alleges that the Bentley entities transferred over \$195,000 to defendants for insurance coverage, and asserts that those funds should be returned. The complaint alleges four counts: Count I, Unjust Enrichment; Count II, Constructive Trust; Count III, Fraudulent Conveyance; Count IV, Rescission. Defendants have now moved to dismiss the complaint in its entirety. For the reasons

that follow, that motion will be granted in part and denied in part.

The unjust enrichment claim asserted in Count I will be dismissed, since that doctrine is not applicable when the relationship between the parties is based upon a written agreement. See Roberts v. Fleet Bank, 432 F.3d 260, 270-71 (3d Cir. 2003).

The claim based upon the assertion of a constructive trust, in Count II, will also be dismissed. A constructive trust is a remedy, not an independent cause of action. Kaiser v. Stewart, 1997 WL 476455 (E.D. Pa. Aug. 19, 1997).

Count III asserts claims based upon the Pennsylvania Fraudulent Transfer Act, 12 Pa. C.S. § 5104. Plaintiff alleges that the Bentley entities were insolvent, and that the transfers to defendant were made with intent to defraud, and were not supported by reasonably equivalent value. Since it is undisputed that the Bentley entities were operating a Ponzi scheme, Mr. Bentley's intent to defraud can be presumed. Missal v. Washington, 1998 U.S. Dist. LEXIS 6016 (D.D.C. April 17, 1998) ("Because a Ponzi scheme is, by definition, unable to repay all creditors, any transfer from the scheme to a creditor is necessarily made with intent to hinder the rights of some other creditor. . ."). Count III will not be dismissed.

In Count IV, plaintiff asserts a claim for rescission. Plaintiff has adequately alleged the essential elements of such a claim. Count IV will not be dismissed.

An Order follows.

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ORDER

AND NOW, this 10th day of March, 2005, upon
consideration of defendant's motion to dismiss the second amended
complaint and the responses thereto, IT is ORDERED:

1. Counts I and II are dismissed.
2. In all other respects the motion is DENIED.

BY THE COURT:

/s/ John P. Fullam
John P. Fullam, Sr. J.